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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,861	05/25/2001	Hermann Jonke	H3775PCT/US	4740

7590

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Glenn E J Murphy  
Henkel Corporation  
Suite 200  
2500 Renaissance Boulevard  
Gulph Mills, PA 19406

EXAMINER

MRUK, BRIAN P

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 06/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/856,861

Applicant(s)

JONKE ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-20, 22 and 24-33 is/are rejected.
- 7) ☒ Claim(s) 21 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. The examiner construes the phrase "substantially water-free" to mean less than 20% by weight of water, as defined on page 4, lines 27-28, of the instant specification.

### ***Claim Objections***

3. Claims 21, 32 and 33 are objected to because of the following informalities:

In instant claims 21 and 33, the phrase "and/or aromatic" should be amended to recite "and/or aromatic groups" for grammatical purposes. Appropriate correction is required.

4. Applicant is advised that should claim 31 be found allowable, claim 32 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The phrase "less than about" in claim 33 renders the claim vague and indefinite. The phrase "less than about" renders the claim indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase "less than about". It is unclear what values are encompassed by the phrase "less than about". The examiner suggests that this phrase should be changed to either "less than". "Claims reciting "less than about" are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about." See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 18, 19, 22, and 24-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Bertilsson et al, WO 94/14941.

Bertilsson et al, WO 94/14941, discloses a dishwasher detergent enclosed in a water-dispersible or water-soluble capsule comprising 5-95% by weight of a nonionic surfactant (see page 3, line 34-page 5, line 2), an enzyme (see page 3, lines 6-33), 0-30% by weight of a solubilizer, such as diols and glycols (see page 5, lines 30-35), wherein the water-dispersible or water-soluble capsule has a volume of 1-10 mL and comprises gelatin (see page 5, lines 3-14), per the requirements of the instant invention. Specifically, note Examples 1-4, which disclose dishwasher detergents in a gelatin capsule comprising various enzymes, an alcohol ethoxylated nonionic surfactant, methyl laurate, butyldiethylene glycol and 8% by weight of free water, for washing dishes. Also note Examples 5-7. Therefore, instant claims 18, 19, 22, and 24-32 are anticipated by Bertilsson et al, WO 94/14941.

10. Claims 18-20, 25-29, and 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Berry et al, U.S. Patent No. 4,597,885.

Berry et al, U.S. Patent No. 4,597,885, discloses a cosmetic composition comprising a soft gelatin capsule containing a substantially water-free liquid blend comprising 0.5-10% by weight of a fragrance, 30-60% by weight of a mixture of a diethanolamine salt of a fatty alcohol ethylenoxysulfate and a fatty acid diethanolamide,

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30-60% by weight of an acidic surfactant, and a diol or triol (see col. 4, lines 20-40), per the requirements of the instant invention. Specifically, not the Example on column 4, which discloses a soft gelatin capsule filled with DEA Laureth Sulfate, Cocamide DEA, Tridesceth-7-Carboxylic Acid, a fragrance, and propylene glycol, per the requirements of instant claims 18-20, 25-29, and 31-32. Therefore, instant claims 18-20, 25-29, and 31-32 are anticipated by Berry et al, U.S. Patent No. 4,597,885.

***Allowable Subject Matter***

11. Claims 21 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Specifically, the prior art of record does not teach or suggest in general an encapsulated composition comprising a polymeric carrier and at least one of the specific anionic surfactants disclosed in instant claim 21, or an encapsulated composition comprising a polymeric carrier and an alkyl ether sulfate and a fatty alcohol polyglycol ether, per the requirements of instant claim 23.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone

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number for the organization where this application or proceeding is assigned is (703)

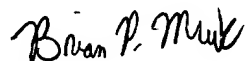
872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk

June 4, 2003



Brian P. Mruk  
Patent Examiner  
Tech Center 1700